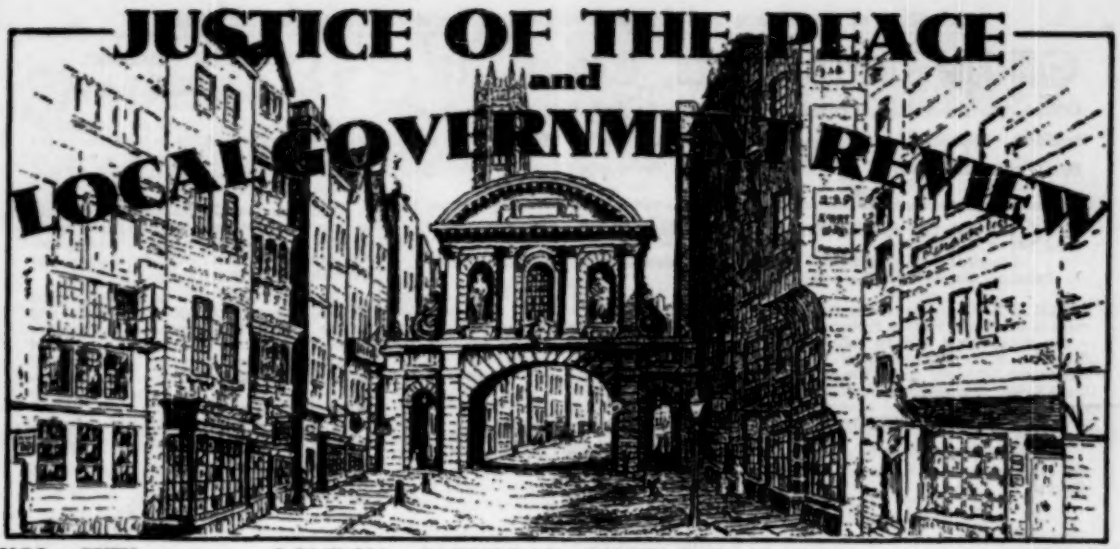

VOL. CXIV. LONDON: SATURDAY, SEPTEMBER 16, 1950. No. 37

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

COUNTY OF PEMBROKE

Combined Probation Areas
Full-time Woman Probation Officer

APPLICATIONS are invited for the appointment of a full-time Woman Probation Officer.

The appointment will be subject to the Probation Rules and the salary will be in accordance with the scales provided under those Rules. The successful applicant will be required to pass a medical examination. A knowledge of the Welsh language will be an advantage.

Applications, on a form to be obtained from me, must reach me not later than Saturday, October 14, 1950.

H. LOUIS UNDERWOOD,
Clerk of the Peace.

County Offices,
Haverfordwest.
September 11, 1950.

NORTH WEST WALES RIVER BOARD

APPLICATIONS are invited for the following appointments to the staff of the above Board, which has lately been established under the River Boards Act, 1948, and is responsible for land drainage works, the prevention of river pollution, fisheries and other duties under the Act :—

(*a*) **Clerk to the Board,** who will be responsible, as chief executive officer, for the co-ordination and supervision of the Board's activities, and who will also act as Chief Financial Officer, in the latter capacity being responsible for the control of the finances of the Board and the supervision of its accounts, including the preparation and issue of precepts. Salary range £1,000 to £1,250, according to age, experience and qualifications. Applicants must possess recognized professional accountancy qualifications. Previous service with a local government authority, catchment board, or fishery board will be an advantage ; and

(*b*) **Chief Engineer,** who will be responsible for the control and execution of land drainage and other engineering works for the Board. Salary—£1,000 per annum, rising by annual increments of £50 to a maximum of £1,200 per annum. Applicants should be Corporate Members of the Institution of Civil Engineers or hold equivalent qualifications and should have had considerable experience of land drainage work.

The above appointments, which are to be filled shortly, will be on a whole-time basis and will be subject to the Local Government Superannuation Act, 1937.

Applications in writing, stating (*a*) age, qualifications, experience and particulars of present employment, (*b*) when the applicant would be free to take up employment, and (*c*) the names and addresses of three referees, should be made to the undersigned not later than October 2, 1950.

GWILYM T. JONES,
Acting Clerk to the Board.

County Offices,
Caernarvon.
September 7, 1950.

BOROUGH OF SLOUGH

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor, at a salary in accordance with the National Scheme of Conditions of Service, namely (*a*) after admission and on first appointment—A.P.T. Division Grade Va (£550—£610 per annum) ; (*b*) after two years' legal experience from the date of admission—A.P.T. Division Grade VII (£635—£710 per annum). The appointment will be subject to one month's notice and to the National Conditions of Service. The Local Government Superannuation Act, 1937, will apply and the selected applicant will be required to pass a medical examination before appointment.

Applications, endorsed "Assistant Solicitor," stating age, qualifications and experience, together with the names and addresses of two persons to whom reference may be made, must reach the undersigned not later than September 29, 1950.

Canvassing, or failure to disclose any known relationship to a member or senior officer of the Council will disqualify.

NORMAN T. BERRY,
Town Clerk.

Town Hall,
Slough.

September 15, 1950.

CITY AND COUNTY OF THE CITY OF LINCOLN

Second Assistant Solicitor

APPLICATIONS are invited for the appointment of Second Assistant Solicitor at a salary in accordance with the scale of salaries of the National Joint Council for Local Authorities Administrative, etc., Services, namely :—

(*a*) after admission and on first appointment A.P.T. Grade Va (£550—£610).

(*b*) after two years' legal experience from the date of admission—A.P.T. Grade VII (£635—£710).

Local government experience is not essential, but applicants should have a sound knowledge of conveyancing and common law. The duties will include some advocacy.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names and addresses of two referees, and endorsed "Assistant Solicitor" must be received by me not later than Wednesday, September 27, 1950.

J. HARPER SMITH,
Town Clerk.

Town Clerk's Office,
Lincoln.

September 5, 1950.

COUNTY OF PEMBROKE

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor in the Office of the Clerk of the County Council at a salary in accordance with Grade A.P.T. VII (£635—£710 per annum).

Candidates should have had experience in advocacy and be capable of assisting in the general legal work of the office including conveyancing. Previous local government experience will be an advantage.

The appointment will be subject to the National Scheme of Conditions of Service and to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. The appointment will be terminable by one calendar month's notice on either side.

Canvassing, directly or indirectly, will disqualify.

Applications, giving the names of two referees, must be received by the undersigned not later than October 14, 1950.

H. LOUIS UNDERWOOD,
Clerk of the County Council.

County Offices,
Haverfordwest.

NEW FOREST RURAL DISTRICT COUNCIL

Assistant in Clerk's Department

APPLICATIONS are invited for this appointment at a salary within Grade A.P.T. 3 and 4. Applicants must be experienced in conveyancing and court work, and the successful candidate will be expected to assist with the general administration work of the office. Experience in a Town Clerk's or Clerk's Department of a Local Authority, though not essential to appointment, will therefore be considered an advantage.

Housing accommodation within the Council's area will be offered to the successful candidate if married, but the Council cannot guarantee the type of accommodation nor its exact location in their area which is very extensive.

Applicants should give full details of their experience and War services if any, and should state the earliest date upon which they could take up the appointment. Testimonials are not required, but the names of two referees should be sent, and applications must be in my office not later than September 20, 1950.

A. E. N. ASHFORD,
Clerk.

Council Offices
Lyndhurst,
Hants.

INQUIRIES

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXIV. No. 37. | LONDON : SATURDAY, SEPTEMBER 16, 1950 | Price 1s. 8d.

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NOTES of the WEEK

Definitions

One of the pitfalls for those who are becoming newly acquainted with the law is the fact that a word may have different meanings in different statutes. Such words as "infant," " child," " public place," and " guardian " at once occur to the mind.

This is well enough, provided the reader of the statute, or it may be rules or regulations, is on the alert to see what enlightment is to be found. Sometimes the interpretation section or paragraph is at the end of the document, sometimes at the beginning, and sometimes, in the case of a lengthy statute, divided into parts in several places.

The best advice that can be given to anyone setting out to master a statute is to look near the end for an interpretation section, and to read it first, so that in reading the Act from start to finish he will have in mind what certain expressions mean. If he does not do this, he may conceive wrong ideas as he goes along. For instance, most people think they know what an infant is, and would read the Adoption Act, 1950, as applying to anyone under twenty-one years of age. However, when they came to s. 45, they would discover that in this Act the word " infant " does not include a person who has been married. In the Act of 1926, it was made clear in s. 1, which referred plainly to an infant who had not been married. This seems on the face of it, preferable, but it is generally safe to assume that a draftsman had good reason for such a change, though it may not be obvious to the less skilled.

In rules and regulations, the definitions are sometimes found at the beginning, sometimes at the end. Contrast, for example, the Adoption of Children (Summary Jurisdiction) Rules, 1936, with those of 1949. For the reason we have stated, we confess to a preference for the interpretation paragraph or rule at the beginning.

No Precedent

It is rather difficult to explain to those without legal knowledge what is the basis and the justification for our system of case law and binding precedents. For the general reader, it has been done with admirable simplicity by Mr. F. T. Giles, in his book *The Magistrates' Courts*, but even magistrates, new to the work, sometimes fail to appreciate clearly what is the place of case law in our system, and either chafe at what they consider irksome restrictions upon their individual judgment or expect to find an exact precedent to guide them in everything they do.

It is, of course, not so much the facts and the decision in a particular case decided by a superior court as the principle it enunciates or illustrates that matters. It is useless to read cases without understanding the principles behind them. Moreover we cannot always hope to find a case to fit every conceivable set of facts.

In the recent case of *Best* v. *Samuel Fox and Company, Ltd. and Another* (1950) 210 L.T. 125, an action for negligence in which the facts are of no special interest to our readers, Croom Johnson, J., held that : The novelty of the action was no bar to it, provided that it was only a new instance of a principle known to the law and not new in principle. The learned judge found authority for the principle in an earlier case.

More than three hundred years ago Lord Chief Justice Anderson, in reply to counsel who was arguing that there was no precedent for a certain course is thus reported : " What of that ? " " Shall we not give judgment because it is not adjudged in the bookes before ? " " We will give judgment according to reason and if there bee no reason in the bookes, I will not regard them."

Probation Officers and Approved Schools

Those whose memories of juvenile court work carry them back to the early days can recall times when there was a certain rivalry, not always quite friendly, between probation officers and officials and others connected with what are now called approved schools. The probation officers were newcomers, the approved school system was well-established. Often the two seemed to be pulling opposite ways. It was just because they did not yet understand one another.

All that is changed, largely as the result of personal contacts and mutual understanding. We are happy to see in the current issue of the *Approved Schools Gazette*, a letter from Mr. Thomas Fogg, principal probation officer for Leicester, acknowledging with gratitude the help he and his colleagues receive from remand home superintendents and heads of approved schools in connexion with the conveyance of children to approved schools. It is generally recognized now that there is much advantage to both schools and probation officers when escort duty is sometimes carried out by probation officers, but it is impossible for this to be done without considerable interference with the other work of a probation officer unless there is such a relation between the officer and the school as will result in the saving of time and trouble. This co-operation is exactly what Mr. Fogg has received in full measure. Readiness to have a child ready at an early hour, meeting the probation officer at a railway station, willingness to receive a child on a day inconvenient to the school but convenient to the probation officer—these are examples of the help given.

We have no doubt similar help is being given all over the country. Today all who are working for the good of delinquent or neglected children realize that they are working in a common cause, and that there is no room for rivalries or jealousies. They can achieve most by pooling knowledge and experience, and by being always eager to give each other help. The work itself is made easier and pleasanter for those engaged in it, and how

much more effective it must be when there is this complete co-operation. Ultimately it is the children who will benefit most.

In the Course of a Journey

The Metropolitan Police Act, 1839, s. 66 provides, *inter alia*, that "every such constable may also stop, search and detain any vessel, boat, cart or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained."

A policeman was suspicious of the movements of a man in the street and asked him what he was doing. The man abused the officer and said he was going to the station to complain. He did so, followed by the policeman. In the police station, another officer saw that the man's pockets were bulky and that he appeared to be trying to conceal something. This second policeman asked him what he had in his pockets and when the man gave no explanation proceeded to search him. The man resisted and assaulted the second policeman. Nothing stolen was found in the search. The man was convicted of assaulting the policeman in the execution of his duty. This was upheld by quarter sessions on appeal, despite the man's contention that the policeman was not acting in the execution of his duty. It was argued that s. 66, *supra*, did not apply because the man was in a police station and was not, when searched, conveying anything in the street. The case (*Willey* v. *Peace* [1950] 2 All E.R. 724), came before the High Court on a Case Stated by Middlesex Quarter Sessions, and the High Court decided that the conviction was right. Lord Goddard, C.J., said that a person does not cease to be conveying or having something in his possession if he has it when he walks along the street and then goes into a police station with the thing still in his possession and is going to walk out of the police station if the police let him go. He continued "In the present case the appellant was in the course of a journey. He went into the police station to make a complaint, but that did not break the transit. He had still got the property on him. He had got it while he was in the street and in the police station. In my opinion, there was ample power to search him given by this section."

The Lord Chief Justice referred to *Hadley* v. *Perks* (1866) 30 J.P. 485, in which Blackburn, J., in giving judgment, used the expression "in the street" but, said Lord Goddard, "what the learned judge was doing in that case, I think, was contrasting the powers of search where a person is conveying anything with the powers where the goods are not being conveyed, but are in a house, warehouse, or other premises, in which case a search warrant must be obtained."

R. v. *Fisher* (1875) 39 J.P. 612 was also referred to.

Legal Aid and Advice

We referred briefly in an earlier note of the week to the Legal Aid (Assessment of Resources) Regulations, 1950, and to the Legal Aid (General) Regulations, 1950. We have had the opportunity of reading these, and we do not think that they lend themselves to any adequate summarizing in our columns. They are full of detail and require, therefore, to be consulted in detail if any information which they give is required. The former regulations set out the way in which the National Assistance Board is to determine the disposable income and disposable capital of applicants referred to them by local committees. The cases of spouses and of infants are specially dealt with. The Board's decision or determination in matters referred to them is final subject to the right of a committee to ask for a review when circumstances have changed materially and to the Board's right to correct any error or mistake. There are two schedules, one containing the rules for computing the rate of income and allowances in respect of income, and the other the rules for computing the amount of capital, and the deductions and allowances to be made in respect of capital.

The General Regulations occupy, without the scheduled forms, some seventeen and a half pages. There are regulations as to the application for and the issue of certificates, the duties of local committees, the refusal of certificates and their amendment, discharge and revocation, the issue of emergency certificates, and so on. The bulk of our readers will not be directly concerned with these matters, and those who are will need to read them *in extenso*.

Approved School Contribution Order

The decision in the case of *Rugman* v. *Drover* [1950] 2 All E.R. 575, was dealt with at p. 449, *ante*, upon the point that quarter sessions has jurisdiction to hear an appeal in respect of a young person who has attained the age of seventeen years. Another, and surprising, point is that no comment was apparently made on the juvenile court's decision in making a contribution order of 23*s*. a week. According to the report of the case the young person was aged sixteen years and ten months when the approved school order was made. By s. 24 (2) of the Children Act, 1948, a contribution order may be made only in respect of a child who has not attained the age of sixteen years, and a juvenile court would therefore have no power to make such an order in respect of a young person aged sixteen years and ten months.

It is clear that even if such an order were made the subsection cited would prevent its enforcement, as it provides that "no payments shall be required to be made under a contribution order made on the father or mother of a child in respect of any period after the child has attained that age" (*i.e.*, sixteen years).

A National Insurance Act Point

We have received a report of a case heard before the Gloucester City bench in which, according to the report, an employer was charged with failing to pay unemployment and national health insurance contributions in respect of one of his employees, and the report states that the prosecutor for the Ministry of National Insurance produced a regulation which stated that any bench considering whether the employee was employed by the defendant on the relative day should refer the case to the Minister for a decision. As the case is a recent one we assume that the proceedings related to contributions due under the 1946 Act, and that the regulation referred to is reg. 6 of the National Insurance (Determination of Claims and Questions) Regulations, 1948, which provides as follows:

6 (1) Where in any proceedings (*a*) for an offence under the Act . . . any question arises which under paragraph (1) of reg. 2 is to be determined by the Minister (subject to an appeal on a question of law to the High Court), the decision of the Minister shall, unless an appeal is pending or the time for so appealing has expired, be conclusive for the purpose of those proceedings.

Paragraph 2 (1) above referred to sets out three classes of questions which are to be determined by the Minister in accordance with Part III of the regulations, and in the case to which we are referring the relevant question is (*a*) whether the contribution conditions for any benefit are satisfied, or otherwise relating to a person's contributions.

The matter might perhaps have been more clearly expressed, but this does appear to be wide enough to cover a question as to

whether a person was or was not an employed person, because employment is the basis of the liability to contribute at a certain rate. This type of provision is not, of course, a new one. There was a similar one in the Unemployment Insurance Act, 1935, s. 4 (1), for example. That provision, being in an Act of Parliament, was easy to find. A similar provision hidden in one of a whole host of regulations is not so easy to trace.

A Hospital still a Charity

We have from time to time been asked to advise upon the position of funds, which had been left to hospitals before the National Health Service Act, 1946. Many of our readers may be concerned with such questions, and should therefore note the decision in *Re Frere (deceased), Kidd and Another* v. *Farnham Group Hospital Management Committee and Others* [1950] 2 All E.R. 513. The testator had made certain gifts to a hospital, for specific purposes, to take effect if at the time of his death it was still run on the voluntary system and not taken over by the State. After certain further legacies, the residue was given as an endowment to the same hospital. The curious result occurred that while the specific gifts were defeated the gift of residue took effect. This, of course, was a matter of the wording of the particular will, which may not be very likely to recur. More important is a second point decided by Wynn-Parry, J., namely that the National Health Service Act, 1946, has not deprived a hospital of its legal status as a charity. This status may still be valuable to the national health service in many contexts.

Default Annis

We have more than once had occasion in our Practical Points to advise upon the position of persons whose land was traversed by a stream, when some obstruction has interfered with its normal flow, so that nuisance arose for which no one of the riparian owners could be shown to be to blame. The decision in *Neath Rural District Council* v. *Williams* [1950] 2 All E.R. 625; 114 J.P. 464, was upon facts not, in substance, unusual. There was a natural water course which in time had been obstructed, not by human agency but by an accumulation of débris brought down by the water course itself. Under the Land Drainage Act, 1930, there is a duty on any person having control of part of a water course in which an impediment occurs, or if the owner is unknown, on the occupier of the land through which the water course passes, to put the water course in proper condition if agricultural land of another person is injured or in danger of being injured by the water. The respondents in the present case might have been liable to proceedings under that section, but the section was not in question in these proceedings. What happened was that the rural district council served a notice, under s. 93 of the Public Health Act, 1936, upon the respondents, on the footing that a statutory nuisance had arisen by their act, default, or sufferance. By the proviso to s. 259 of the Act it was, however, necessary to show that there had been an act or default if proceedings were to succeed. Since the rural district council could not rely upon s. 93, except as applied by s. 259, they could not successfully fix the respondents with responsibility on the ground merely of "sufferance," and therefore had to show that there was a "default." This the Divisional Court held could not be established, whether or not there was a breach of the statutory duty imposed in certain cases by the Land Drainage Act, 1930, because there was no common law obligation, and no obligation created by the Public Health Acts, to do anything. Water in a water course is thus put on the same footing as the outcrop of overhanging rock in *Pontardawe Rural District Council* v. *Moore-Gwyn* (1929) 93 J.P. 141, and the thistledown in *Giles* v. *Walker* (1890) 54 J.P. 599. Those natural occurrences may, as the thistledown has been, and as water has been to a limited extent, come to be dealt with by statute, but they are not at common law within the rule in *Rylands* v. *Fletcher* (1868) 33 J.P. 70.

ONE INFORMATION, ONE OFFENCE

Section 32 of the Criminal Justice Act, 1948, left unaffected the requirement of s. 10 of the Summary Jurisdiction Act, 1848, that "every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every such information shall be for one offence only, and not for two or more offences." The effect of s. 32 of the 1948 Act is to make it permissible in one summons to set out two or more matters of complaint or two or more offences against the same person provided that each matter of complaint or each offence is separately stated in that summons.

There have been a number of cases decided from time to time where the point in issue was whether a conviction was bad for duplicity or uncertainty in that it alleged more than one offence or did not state with sufficient particularity which offence had been found proved.

In the recent case of *Moore* v. *Ray* [1950] 2 All E.R. 561, the Lord Chief Justice, in sending a case back to justices on another point, took the opportunity to express "for the guidance and information of food and drugs inspectors and clerks to magistrates" the opinion of the High Court on what he described as the common form of informations under the Food and Drugs Acts, by which an offender is charged with "unlawfully selling to the prejudice of the purchaser a certain article of food which was not of the nature, substance and quality of the article demanded by the purchaser."

Lord Goddard pointed out that the wording of the relevant section (s. 3 (1) of the 1938 Act) is "if a person sells to the prejudice of the purchaser any food or drug which is not of the nature, or not of the substance, or not of the quality, of the food or drug demanded by the purchaser . . ." he shall be guilty of an offence. Lord Goddard referred to the decision in *Bastin* v. *Davies* [1950] 1 All E.R. 1095; 114 J.P. 302, that to charge an offence under this section by saying that the sale was to the prejudice of the purchaser in that the article was not of the nature *or* of the substance *or* of the quality demanded was to fail to comply with s. 10 of the Summary Jurisdiction Act, 1848, because it was an information disclosing more than one offence. He continued "I think the same objection applies if the word 'and' is used instead of the word 'or' because the section does not say 'which is not of the nature, and not of the substance and not of the quality' it says 'not of the nature *or* not of the substance, *or* not of the quality'."

The Lord Chief Justice concluded by saying that those concerned should know that the summons must state in which respect it is alleged that the offence has been committed. If they are in doubt, he said, they can lay more than one information. As the point was not taken in the case then before the Court the Court gave no formal ruling on it.

With such a clear indication of the views of the High Court on this point it is to be expected that informations under s. 3 (1)

of the 1938 Act will in future be laid in the way suggested by Lord Goddard and that summary courts will be careful to convict of a specific offence showing whether the defect was one of nature, or one of substance or one of quality. An important question remains, however. How is the principle enunciated by the Lord Chief Justice to be applied in cases arising under other statutes, particularly having regard to certain decided cases.

In *R.* v. *Wells and Another* (1904) 68 J.P. 392, it was decided, as one would expect, that a charge alleging that a person was driving at a speed *or* in a manner dangerous to the public was bad for duplicity. But in *R.* v. *Jones and Others* (1921) 85 J.P. 112, the charge was that the offender drove recklessly *and* at a speed which was dangerous to the public. Lord Coleridge, in a judgment in which he referred to a number of previous cases, including *R.* v. *Wells*, *supra*, said " but here the act charged was one and indivisible, namely the act of driving, and the fact of driving recklessly does not prevent it from being also dangerous to the public, and as it was only one act the conviction is good " So far as this case is concerned it cannot be denied that no one could say, with the conviction in that form, whether the justices found that the driving was reckless or at a dangerous speed or both, and there would appear to be ground for arguing that the conviction was bad either for uncertainty or for duplicity. The fact remains, and *R.* v. *Jones* has not been overruled, that this conviction was held to be good in law and not to be bad either for duplicity or uncertainty.

In seeking to decide whether a statute creates one or more than one offence we have *Field* v. *Hopkinson* (1944) 108 J.P. 21, as authority for the proposition that where a statute forbids the doing of act A or act B there are two offences and conviction of both on one information is bad for uncertainty.

In *Gough* v. *Rees* (1930) 94 J.P. 53, s. 5 of the Summary Jurisdiction Act, 1848, was under consideration. By this section every person who shall aid, abet, counsel or procure the commission of a summary offence himself commits an offence. These four words have different meanings, although the meaning of one may shade into that of another, and one might be tempted to argue that here are four separate classes of offender, he who aids, he who abets, he who counsels and he who procures, and that the prosecution must allege which of the four offences has been committed. But in *Gough* v. *Rees* the charge was that the defendant did " aid and abet, counsel and procure " the commission of an offence by someone else and Lord Hewart, C.J., quoted with approval the words of Channel, B., in *In re Smith* (1858) 22 J.P. 450 at p. 451, " one offence may be properly described by the words ' aid, abet, counsel and procure ' ; there may be an offence which would justify the use of all those words." This would appear to mean, having regard to s. 10 of the Summary Jurisdiction Act, 1848, that s. 5 creates only one offence and not four possible offences.

In *Davis* v. *Leach* (1887) 51 J.P. 118, the case arose on a prosecution under a byelaw which said that no smoke or steam was to be emitted so as to constitute any reasonable ground of complaint to passengers or to the public. Here again, in the absence of authority, one might be pardoned for assuming that to emit smoke was one offence and to emit steam was another. The charge in question alleged the emission of smoke and steam and the court held that there was no objection to this form of charge it being no less an offence to emit smoke that steam was intermixed with it.

In *Barker* v. *Woodruffe* (1927) 91 J.P. 118, the information alleged that the respondent had sold to the appellant, and to his prejudice, a certain article of food which was not of the nature, substance and quality demanded. Lord Hewart, C.J., said that he thought it was the duty of the magistrate to say that this mixture fell below the requirements which were placed before him, as to the true *nature, substance and quality* (the italics are ours) of the extract, and that he ought to have convicted the respondents. It was not argued or suggested that the information was bad for duplicity or uncertainty.

We come next to *Thomson* v. *Knights* [1947] 1 All E.R. 112. Justices convicted a defendant of being unlawfully in charge of a motor vehicle whilst under the influence of drink or a drug to such an extent as not to have proper control of it. It was sought to upset the conviction on the ground that it was bad for duplicity, in that the section created two separate offences, one where the driver was under the influence of drink and the other where he was under the influence of a drug. The court held, however, that there is only one offence namely that of driving when incapable of having proper control of the vehicle and that incapacity is caused by drink or a drug. Humphreys, J., in his judgment said that the same reasoning applied as in *R.* v. *Jones*, *supra*.

It appears from the report of *Moore* v. *Ray*, *supra*, that the point on which the Lord Chief Justice expressed the opinion of the court as set out at the beginning of this article was not argued by counsel on either side. Had it been we wonder whether an attempt would have been made to pray in aid *Thomson* v. *Knight*, *supra*, and to say that under s. 3 (1) of the Food and Drugs Act, 1938, the real offence is selling an article of food or a drug to the prejudice of the purchaser and that it is immaterial whether it is to his prejudice because of a defect of nature, of substance or of quality. We have no doubt that this point was present in the mind of the court, but there is no mention of it in the report.

We have to bear in mind that the decision in *Moore* v. *Ray*, *supra*, did not turn on this point, and that a case may arise in which the conviction is in the form which the court has stated to be wrong and the matter will have then to be argued. Justices have also to remember the case of *Edwards* v. *Jones* [1947] 1 All E.R. 830, in which it was decided that where an information contains more than one offence justices should take steps to see that it is amended by inviting the prosecutor to decide on which offence he elects to proceed. On such election being made the remaining offence or offences should be struck out. If the prosecutor refuses to elect, the information should be dismissed. If, of course, the various offences are separately set out on one summons form as provided by s. 32 of the Criminal Justice Act, 1948, they can all be considered by the court, each being treated as if it were a separate summons.

In conclusion, we think that the underlying principle which should help all concerned in considering whether s. 10 of the Summary Jurisdiction Act, 1848, is being complied with is that its requirement that every information should be for one offence only is basically fair. If a person is to be called upon to answer a charge rendering him liable to penalties he should know precisely what is alleged against him. The onus is on the prosecution to prove its case, and this implies that it must (or should) know what case it seeks to prove. The prosecution, therefore, ought not to be allowed to argue on these lines : there are two or three possible offences here, we have not quite made up our minds which offence we think the defendant has committed so we cannot allege it clearly in the summons, but here are the facts and will you (the court) please say which of the charges you think these facts support. As Lord Goddard pointed out in *Moore* v. *Ray*, *supra*, the prosecution in a suitable case can take out more than one summons and if they fail to prove their case on one they may be able to do so on another. But in this case the defendant, and the court, know at any particular moment what the precise issue is, and this makes it much more likely that real justice will be done.

CRIMINAL STATISTICS—ENGLAND AND WALES, 1949

Statistics relating to crime and criminal proceedings for the year 1949 were presented to Parliament in July last and details have recently been published by H.M. Stationery Office.

The number of indictable offences known to the police for the past year was 459,869; for the year 1938, 1947 and 1948 the figures were 283,220; 498,576 and 522,684. The percentage of the number of indictable offences known to the police which were cleared up was forty-four last year; forty-eight in 1938; forty-one in 1947 and forty-two *per cent.* in 1948.

Analysing types of offences, it appears that crimes of breaking and entering premises fell to 91,088 from 112,271 in 1948; indeed the 1949 figure was the lowest since 1944, when 73,890 offences of breaking occurred. On the other hand, crimes of receiving, frauds and false pretences increased to a new peak, 34,564 compared with 28,370 in 1948; the figures for 1938 and 1939 were 19,530 and 17,561; in 1940 they fell to 16,998, but in the following year increased to 21,392.

Sexual offences increased to 12,015, the highest ever from 10,922 the year before; in 1938 and 1939 the figures were 5,018 and 5,015 respectively. For 1940, these crimes were 4,626 and in the following years they rose steadily to 9,999 in 1947. Offences of violence against the person exceeded previous records, there were 5,235 cases against 5,183 the year before. In 1939 the figures were 2,722 and the following year 2,899; the total in 1940 was 2,424 and in the succeeding years the numbers rose until in 1947 there were 4,408 of these crimes recorded. Larcenies fell from 349,358 in 1948 to 301,591 last year; in 1938 and 1939 the figures were 199,951 and 219,478. The 1940 total was 225,671 and these crimes rose annually to 1947 when the aggregate was 330,918. Other offences also registered a decrease from 16,580 in 1948 to 15,376 last year. In 1938 and 1939 the comparable totals were 6,949 and 6,523; thereafter they increased annually to 14,360 in 1947.

The number of persons found guilty in 1949 of offences of all kinds was 650,497 of whom 114,294 were found guilty of indictable offences, 523,563 of non-indictable offences and 12,640 of infringements of the Defence Regulations. Compared with 1948 there was a decrease of 15,090, or 11.6 *per cent.* in the number found guilty of indictable offences, of 4,003 or 0.8 *per cent.* the number found guilty of non-indictable offences, and of 7,523 or thirty-seven *per cent.* for offences against the Defence Regulations.

Traffic offences (non-indictable) form 50.2 *per cent.* of the total; larceny 11.5; offences of prostitution 0.9 *per cent.*; receiving 0.8; sexual offences 0.7; fraud and false pretences 0.5, and offences of violence against the person 0.5. *per cent.* of the total.

Persons found guilty at all courts of indictable offences numbered 114,294 of whom 99,054 were males and 15,240 females. Twenty-two *per cent.* were under fourteen years; thirteen *per cent.* persons aged fourteen and under seventeen; eleven *per cent.* aged seventeen and under twenty-one; twenty-three *per cent.* aged twenty-one and under thirty, and thirty-one *per cent.* aged thirty and over. Sixty-four *per cent.* of the total were found guilty of one or other of the forms of larceny, seventeen *per cent.* of breaking and entering and five *per cent.* of receiving. These types of crime account for eighty-six *per cent.* of the persons found guilty of indictable offences.

The number of persons found guilty by the higher courts in the years 1938, 1947, 1948 and 1949 were 8,612; 17,982; 20,669 and 17,405. Regarding last year's total 1,095 were dealt with at the Central Criminal Court, 3,767 at other Assize courts, and 12,543 at courts of quarter sessions.

In 1949, 494 persons under seventeen, including nine under fourteen years old, were found guilty by the higher courts; compared with 728 in 1948, 681 in 1947 and 241 in 1938.

The number of persons found guilty of indictable offences by magistrates' courts in the years 1938, 1947, 1948 and 1949 were 69,851; 97,690; 108,715 and 96,889. Last year 24,872 persons under fourteen were found guilty by magistrates' courts, compared with 26,715 in 1948, 21,152 in 1947 and 15,558 in 1938. Regarding persons aged fourteen and under seventeen, 15,064 were found guilty compared with 16,991 in 1948, 13,861 in 1947 and 12,317 in 1938.

Those found guilty of non-indictable offences of all kinds in the years 1938, 1947, 1948, and 1949 totalled respectively 709,019; 498,654; 527,566 and 523,563. Persons found guilty of traffic offences numbered 320,182 compared with 326,130 in 1948, 324,610 in 1947 and 475,124 in 1938.

Those found guilty in 1949 of drunkenness totalled 34,050 compared with 31,260 in 1948, 23,762 in 1947 and 52,661 in 1938. The number found guilty in 1949 of disorderly behaviour was 11,012 compared with 11,515 in 1948, 9,085 in 1947 and 17,379 in 1938.

Persons found guilty at magistrates' courts of cruelty to, or neglect of, children was 888; in addition nineteen were found guilty at higher courts. The corresponding figures for 1948, 1947 and 1938 were 1,004 and thirty-six; 1,017 and twenty-eight, and 932 and twelve.

For offences of betting and gaming 9,595 persons were found guilty, compared with 11,152 in 1948, 12,856 in 1947 and 13,155 in 1938. Offences in relation to prostitution numbered 5,766, compared with 5,647 in 1948, 5,014 in 1947 and 3,192 in 1938.

A table set out by sex and age groups the number of persons, age seventeen and over, sentenced to imprisonment without the option of a fine for non-indictable offences; in 1938, 9,064 males and 760 females; 1947, 5,256 males and 744 females; 1948, 5,679 males and 769 females and last year 5,271 males and 567 females.

Dealing with probation in connexion with non-indictable offences the survey gives figures as follows. Total of all ages for males and females respectively in 1938, 3,432 and 524; 1947, 2,084 and 565; 1948, 2,609 and 527; 1949, 2,716 and 543.

During 1949 one hundred cases of murder of 114 persons aged one year or over were reported as known to the police. In thirty-four cases, involving forty victims, the murderer or suspect committed suicide. In fifty-nine cases, involving sixty-seven victims, sixty-one persons were arrested; of those arrested twelve were found unfit to plead, twelve found guilty but insane, and one certified insane after conviction, these three groups being together responsible for twenty-five victims. In seven cases, involving seven victims, no arrest was made. Seventeen were executed.

Suicides during last year numbered 4,653 compared with 4,604 in 1948. The number of cases of attempted suicide which came to the knowledge of the police was 4,686 against 4,553 the year before.

Legal aid certificates issued in proceedings before magistrates' courts numbered 2,502, 300 applications were refused. Certificates offered by these courts without application by the prisoners were accepted in 487 cases and declined in 202. In proceedings

before examining justices the number of certificates applied for and granted was 2,577 ; in 221 cases they were refused. In 389 instances they were offered by the justices without application by the prisoner and accepted, whilst on 108 occasions the offer was declined. Defence certificates were applied for by prisoners in sixty-one cases of murder, none was refused, and in 5,725 other offences when refusals totalled 689. In twenty cases of murder the certificates were offered by the justices and accepted, and in 840 other offences, the offers were accepted by the accused, but declined in 181 instances.

Applications for defence certificates determined by courts of quarter sessions were granted in 1,130 cases and refused on 468 occasions. When offered by the court without application by the prisoner they were accepted in 232 instances and declined in eleven. In Courts of Assize these certificates were granted on application on 248 occasions and refused in seventy-four. Forty-one were offered by the court and accepted by the accused, fourteen were declined

Appeal aid certificates determined by magistrates were granted to 273 appellants and fifty one respondents ; they were refused in sixty-three cases to appellants and in ten cases to respondents. In courts of quarter sessions these certificates were applied for in eighty-three cases by appellants and in one case by a respondent. Refusals to applicants numbered thirty-six and to respondents in one case only.

CONTROL OF PUBLIC EXPENDITURE

An impression of wider, deeper and more perspicuous penetration than usual into the realm of economy in public expenditure is given in the fourth report from the Committee of Public Accounts. Subjects of their inquiries were more numerous and diverse, examination of expenditure proceeded well beyond mere statistical measurement into reasons for the magnitude of various expenditures, and the views expressed in the report often show appreciation of the close connexions between efficient administrative organization, within and between departments, and economy of expenditure resting on evaluation of quantity in terms of optimum results.

Some tidying up of past defects and doubts about adequate statutory powers for certain expenditures preceded arrangements for the supply of more adequate data for future investigations. Specific authority being obtained, in the Miscellaneous Financial Provisions Bill (now Act), 1950, for long-standing Exchequer grants to police authorities, was noted, together with an assurance from the Ministry of Health that they would consider with the Treasury whether the total sum provided for payments to local health authorities (£16 million in England and Wales in 1950-51), could be broken up into subheads. Detailed information seems desirable even where global provision is static, as some safeguard against undue expansion in particular details made possible by perhaps routine contractions in others.

After looking at some decreasing ratios by which actual annual expenditure of civil and revenue departments fell short of estimates, the committee expressed a concern frequently in the minds of local finance committees, occasionally for similar reasons. The concern in the report arose from the extreme disfavour of the Chancellor of the Exchequer towards supplementary estimates, giving rise to the possibility of inflation of original demands by departments in order to procure marginal funds ; the committee learned from the Treasury that departments are never encouraged or permitted to provide in their estimates for liabilities which might not become due for payment in the year of estimate. The problem of approximating estimates, usually made considerably in advance of the accounting period, with requirements as they will in fact eventuate, is reflected, to some extent, in the finances of local authorities by the frequency with which appropriations from balances are practicable.

The apparently excessive scale of the provision made, at a requisitioned hotel near Brighton, for training fire service officers of the local fire services administered by councils of counties and county boroughs, will accentuate qualms felt by those authorities at the financial commitments into which they have been impelled since the war. Provision of accommodation for about 250 students, compared with need for sixty places and actual occupancy by an average of thiry-five students (at an average cost of about £40 a week for each trainee), must make tax and ratepayers think furiously about the system of control over the inception of large public expenditures. In the unfortunately worsening context of international relations, however, critical views of rising expenditure in certain directions, of which this seems to be one, may have to be modified.

Various aspects of expenditure on the national health service naturally attracted considerable attention from the Committee of Public Accounts. Lack of effectiveness in the system of control over expenditure during the first two years of the new service was ascribed by the Comptroller and Auditor General "partly to lack of information or experience and partly to difficulties arising because hospital administrators were unaccustomed to the financial control necessary to satisfy Ministerial responsibility to Parliament." Part of the explanation of the Ministry of Health was that "a very tight form of organization to control expenditure in detail from Whitehall" would have been "entirely alien to the spirit in which hospitals had been administered in the past and it was decided, with Parliamentary approval, to accord a liberal measure of self-government to the hospitals so as to encourage suitable volunteers to serve on the managing bodies" ; also, as part of a "new phase" the Ministry were suggesting "that special teams should visit the hospitals in order to look more closely into their establishments, both lay and medical." Further, the Ministry were going to ask the hospitals to adopt a simple type of standardized accounting to enable comparisons to be made of the expenditure at different hospitals of the same type, and they were also taking advice and making some experiments in the field of costing. Among the conclusions of the committee was a hope that the departments concerned may ultimately evolve a system of control which, while allowing a reasonable degree of freedom, will enable Parliament to be assured that the sums made available for the hospital service are administered wisely and with due regard to economy.

Levels of remuneration in the national health services are discussed at some length in the committee's report. Dentists' earnings were regarded as having been generally in excess of the ranges contemplated by recommendations of a committee set up under the chairmanship of Sir Will Spens, and considerably higher than those of doctors, which the Ministry of Health thought would be a serious state of affairs if it continued. Available evidence suggested that the earnings of general practitioner doctors as a whole may have somewhat exceeded the Spens ranges, but the departments were proposing to obtain fuller information. Further investigations appear to be pending as regards the remuneration of chemists and opticians, and the

profits of the manufacturers and wholesale suppliers of optical goods.

Regret was expressed by the committee that all the initial rates of remuneration of persons participating in the new health services " were not made provisional or temporary pending ascertainment of the relevant facts ; " they welcome steps now being taken, " although they do not know whether these might not have been taken sooner." Sympathy may not be universal with a suggestion sometimes heard that this or other public services should not have been commenced, altered or transformed until preparations had been perfected to the last degree. Nevertheless, many may think that a considerable period before and four years after the passage of legislation should have given adequate time for the application of suitable means of financial control drawn or adapted from the great wealth of available knowledge and experience.

Prospective payments by the Central Land Board, under the Town and Country Planning Act, 1947, were the subject of some critical comments by the Committee of Public Accounts. The statutory schemes, to be made by the Treasury, for distributing the £300 million, provided for in the Act of 1947, between claimants in respect of depreciation of land values as at July 1, 1948, are not expected to be formulated before 1952 but, as explained in the Board's report for 1948-49, paras. 30 to 32, the owners of certain " near ripe " land held by builders as a reserve for building purposes, or consisting of single plots on which the owners will build houses for their own occupation before January 1, 1953, have been promised payments from this sum representing full compensation for the loss of development value of the lands concerned. The Central Land Board were unable to provide an estimate of the total value of the claims covered by these promises, constituting a prior charge in the distribution of the £300 million, but they stated that it would be very much more than the development charges, estimated at £7 or £8 million, to be recovered by set-off against these claims, in respect of the permitted developments on these lands at the date of distribution. Nor could the Board give any indication of the total value of all the claims to be satisfied from the £300 million, and they are, therefore, still unaware of the dividend likely to be available to the general body of claimants after meeting prior charges. The committee noted that the Board hoped that the absence of statutory authority for concessions would be rectified in schemes to be laid before Parliament by the Treasury in due course, but regarded as undesirable the continuation over a long period of a procedure which has not statutory authority.

Local authorities will be especially interested in some remarks concerning Exchequer Equalization Grants under the Local Government Act, 1948, payable to about three-quarters of the councils of counties and county boroughs in England and Wales, and indirectly benefiting many county districts. Annual payments now total approximately £50 million, and provide some authorities with income to meet two-thirds of their expenditure, and, with other Government grants on services such as education, health and fire, bring the Exchequer's share of local expenditure up to as much as eighty *per cent.* In examination by the Committee of Public Accounts, the Ministry of Health stated that they rely in the first place on their district audit system to bring to their notice any instance of extravagance. The district auditors report primarily to the local authority, but they also report to the chief auditor, who reports to the Ministry if necessary. The Act of 1948 gives the minister concerned power to reduce a grant to a council whose expenditure he considers excessive and unreasonable, but only if such reduction is approved by resolution of the House of Commons. Apart from this, the committee observed, the minister has no powers to prevent expenditure of which he may disapprove.

In the circumstances, the committee considered that the working of the arrangements in relation to equalization grants mentioned by the Ministry of Health should be closely watched. They trust that the reports of the district auditors on the accounts of authorities receiving equalization grants, and any other relevant information obtained by the departments concerned, will be made available to the Comptroller and Auditor General, so that he may assist future Committees of Public Accounts to judge, in the light of fuller experience, whether any modification in the arrangements is desirable. They also hope that departments responsible for specific grants for particular services will take full account of the effect of the equalization grants and, if necessary, review the basis of determining their own grants. To this end they suggest that such departments should maintain close contact with the Ministry of Health and make available to them any information in their possession which might assist those departments in checking possible extravagance.

Functions of district auditors mentioned to the Committee of Public Accounts by the Ministry of Health are certainly beyond those laid down in the Local Government Act, 1933, s. 228, but might be held to come within the undefined " duties " which the Minister of Health " may assign to district auditors " under s. 220 (2). District auditors do, in fact, usually have in mind the possibility of extravagant expenditure, though it is doubtful whether they have sufficient resources to make more than casual checks. Fortunately, the bulk of local authorities are, if anything, more careful (partly because they are nearer to the people who have to find the money) than central departments in entering into financial commitments.

TENANCY REPLACED BY LICENCE

The Rent Restrictions Acts produce so much sharp practice (this is a charge against human nature rather than against the Acts) that *Foster* v. *Robinson* [1950] 2 All E. R. 342, may be welcomed as a decision in which the law, as declared by the Court of Appeal, conformed to good faith, and to that good feeling towards subordinates which persons of good will must wish to see surviving. A farm worker occupied, and paid rent for, a cottage belonging to a farmer for whom he had worked for many years. In May, 1946, he had become too old to work. The farmer, who was his landlord as well as his former employer, agreed by word of mouth to let him live rent free in the cottage for the rest of his life, and so he did. With him there lived a daughter, who upon the old man's death refused to leave. The landlord gave her three months rent free, and then brought his action for possession : it should be said that he was selling the house, not using it for a farm worker, so that he could not have claimed possession on any statutory ground.

Now it is evident that, if the father was a tenant at the time of his death, the daughter would have become a tenant by virtue of the definition in s. 12 (1) (*g*) of the Increase of Rent and Mortgage Interest Act, 1920, and would therefore have been entitled to step into his shoes—not, of course, rent free, but at the rent her father ought, if the original tenancy had continued, to have been paying. This claim she may have made in all good faith. Naturally, she wished to keep her home, and may well have known of cases where under the Acts a daughter was able to do so, upon the death of a father for whom she had kept house. But

had her claim succeeded those employers, who are still in the fortunate position of being able to treat old servants generously, might well have been deterred from doing so.

It is one thing to let an old man or woman stay in a cottage after the original reason of their occupancy has ended, and quite another to find, as may happen under s. 12 (1) (*g*) of the Act, that in being kind to an old person you have inadvertently accepted as your tenant his daughter or grand-daughter, who may stay on until she dies. The learned county court judge, and the Court of Appeal, were able to avoid this result by holding on the facts that the oral transaction between Foster, the farmer, and Robinson, the workman, amounted to a genuine surrender of the contractual tenancy (which itself had been oral throughout), after which Robinson paid no more rent, but remained in the cottage as a bare licensee. There was, therefore, no tenancy to which his resident daughter could succeed by the operation of s. 12 (1) (*g*).

It was urged, as it obviously would be, on the daughter's behalf that this was opening a dangerous door to evasion of the Acts. But every case has to be considered on its own facts, and in this case the *bona fides* of the arrangement (from which Robinson had substantially benefited was accepted by the Court and was the basis of the decision.

MISCELLANEOUS INFORMATION

MEDICAL OFFICERS' SALARY CLAIM REFERRED TO ARBITRATION

The Ministry of Health have issued the following statement on behalf of the Medical Council of the Health Services Whitley Councils :

At the first meeting of Committee " C " of the Medical Whitley Council, which was held on March 16, 1950, the Staff Side submitted proposals for revised salary scales for medical officers employed by local authorities. These proposals, together with counter-proposals submitted by the Management Side, have been the subject of continuous negotiation in the committee, but it has not been found possible to reach agreement. At a meeting of the committee held on July 24, 1950, the Staff Side intimated their desire to refer the matter to arbitration and the committee agreed that the difference between the two sides should be reported to the Ministry of Labour for reference to the Industrial Court.

HALF-DECKED PUBLIC SERVICE VEHICLES

The use on the roads of a new type of single-decked bus or coach, officially termed a half-decked public service vehicle, in which the seats are arranged at two different levels but served by one gangway, was made possible from Saturday, July 29, 1950, under regulations made by the Minister of Transport, entitled (*a*) the Motor Vehicles (Construction and Use) (Amendment) (No. 3) Regulations, 1950 ; (*b*) the Public Service Vehicles (Conditions of Fitness) (Amendment) (No. 2) Regulations, 1950 ; (*c*) the Public Service Vehicles (Equipment and Use) (Amendment) Regulations, 1950 ; (*d*) the Standing Passengers (Amendment) Order, 1950.

The overall length of such vehicles will be limited to thirty feet and the seating capacity to fifty passengers, excluding the driver (and conductor, if one is carried), while the carriage of standing passengers will be prohibited.

Generally, the half-decked vehicles will be subject to the same conditions as single-decked public service vehicles, but as an additional safety measure the new regulations require the provision of an emergency exit in the roof of half-decked vehicles besides the two exits (one of which may be an emergency exit) required on single-deckers.

MINOR PARISH COUNCILS

Village children in the Newbury (Berkshire) district may soon have their own parish councils, run on lines identical to adult councils, if a scheme to be launched soon by the Newbury and District branch of the National Association of Local Government Officers is sufficiently well supported.

Officers of the branch will meet the village representatives to lay the foundations of a plan which it is hoped will lead to the formation of a juvenile town council in Newbury. The scheme is the idea of branch secretary and public relations officer, Mr. K. E. Bellinger. It included originally the formation of a " Borough of Newbury Minor." This has been found difficult to achieve, however, since there is no convenient nucleus upon which to build, and so, as a start, a number of village " Minor Parish Councils " are proposed.

Plans for recruitment and running these bodies include an approach by village youth clubs to respective parish councils for sanction and help, preparation by volunteers from these clubs of registers of electors (to include names of all young people between eleven and twenty) and elections by ballot, probably at an annual youth club or village function.

It is proposed that to begin with, nominations for councillors shall result from a general knowledge test, to ensure a certain standard. Ultimately, the nominations will be made in accordance with the Representation of the People Act.

The scheme aims at the promotion of an organization among youth which will coincide exactly with the present structure of local government so that children may accustom themselves to the parts they will play at the age of twenty-one.

To this end, the objects of " Minor Parish Councils " are defined as securing respected recognition, an extension of civic interest and the protection of local self government as part of the British democratic system.

INCREASE IN FEES FOR CERTIFIED COPIES AND EXTRACTS SUPPLIED BY THE REGISTRAR OF COMPANIES

From October 2, the fee appointed by the Board of Trade under s. 426 (1) (*b*) of the Companies Act, 1948, for a certified copy or extract supplied by the Registrar of Companies of any document kept by him (other than a certificate of incorporation of a company), will be raised from 4*d*. a folio of seventy-two words to 6*d*. a folio.

NOTICE

The next court of quarter sessions for the borough of Blackpool will be held on September 25, 1950.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 59.

A DIRTY RESTAURATEUR

The proprietor of a café in Wigmore Street, London, appeared at Marylebone Magistrates' Court on August 2, 1950, charged, first, with a contravention of s. 13 (1) (*a*) of the Food and Drugs Act, 1938, in that a sanitary convenience upon the premises was so placed that offensive odours therefrom penetrated into the kitchen and food storage room; secondly, with a contravention of s. 13 (1) (*c*) of the Act in that the walls of the kitchen and scullery were not kept in a proper state of repair; thirdly, with a contravention of s. 13 (1) (*g*) of the Act in that there was an accumulation of refuse in the basement food storage room, the floor of which was dirty; and fourthly, with a contravention of s. 13 (1) (*h*) of the Act in that the gas cookers and food preparation tables, refrigerator and shelves in the service room were dirty.

The defendant pleaded not guilty to the first two summonses, and guilty to the third and fourth. A sanitary inspector gave evidence in support of the charges specified above, detailing facts which came to her notice when she visited the café—"a reasonably high-class restaurant"—on June 8, and said that since then there had been a decided improvement and that, had the present conditions prevailed on June 8, proceedings would not have been initiated.

For the defendant, it was stated in mitigation that he had recently had the premises redecorated and that they were now in a first-class condition. The learned magistrate, Mr. Daniel Hopkin stated that, in his opinion, St. Marylebone Borough Council (who had initiated this prosecution) were doing invaluable work in showing up people like the defendant. This case, he said, was the second or third he had heard recently respecting premises, where food was prepared, which were simply filthy and dirty. He was perfectly certain that those who went to the premises knew nothing of the filthy conditions under which their food was prepared, otherwise they would not go there. What was wrong was that the people who ran these places did not use enough labour to keep them clean. Instead, he said, they put a bit of paint on and said "It doesn't matter about the rest."

The defendant was fined £5 and £5 costs on the first summons; £5 and £2 costs on the second summons, and £2 upon each of the third and fourth summonses.

COMMENT.

This type of case is not easy to detect and in view of the great dangers to public health which may flow from insufficient regard for cleanliness in the preparation of food, it is right that such cases, when detected, should be treated severely.

It will be remembered that s. 13 of the Act contains multitudinous precautions which must be taken to guard against contamination of food and there is a provision that offenders, in addition to a fine not exceeding £20, may be ordered to pay a further fine of £5 for each day during which the offence continues after conviction.

(The writer is indebted to the town clerk, St. Marylebone, for information in regard to this case.) R.L.H.

No. 60.

FACTORIES ACT, 1937—AN UNUSUAL CHARGE

In July, 1950, a limited company was, at Gloucester County Magistrates' Court, charged with a contravention of the provisions of s. 28 (4) of the Factories Act, 1937, for that, on a day in April, a tank which contained an inflammable substance was subjected, in a factory of which the company was the occupier, to a welding operation which involved the application of heat without all practicable steps having been taken to remove the substance and any fumes arising therefrom.

For the prosecution it was stated that the company employed 3,000 people, a number of whom were engaged in the manufacture of aircraft fuel tanks. Before testing for leaks in the joints, the joints were painted with whitening, paraffin was poured in and the tanks subjected to air pressure. They were then rolled about and if there were any leaks the paraffin stain was visible on the whitening. Repairs were then carried out by oxy-acetylene welding.

On April 12 a man tested a tank and found a leak. The works inspector decided it must be repaired and the faulty joints were welded. The tank was tested again, and it was found that it still leaked, so the air pressure was let out.

The paraffin was left in the tank overnight, and next morning the tank was welded with an oxy-acetylene torch with the paraffin still inside.

The tank tester, called for the prosecution, said that he had been engaged on the work for fifteen years. Cross-examined by a solicitor on behalf of the company, who pleaded not guilty to the charge, the tank tester said he opened the vents in the tank for half an hour on the afternoon of the 12th, closed them that night, and opened them again for a quarter of an hour on the morning of the 13th. "If I open the vents I regard this operation as perfectly safe, and have done for many years" concluded the witness.

An inspector of factories said that the method used by the company might result in an explosion. If the operation had been carried on for a number of years it was just luck that an explosion had not occurred. The chief chemist of the defendant company said that there had been no evidence that the practice was dangerous, and it was submitted on behalf of the defendant company that the particular tank referred to above was not explosive or inflammable and practical experience has shown that this method of testing was not dangerous.

The court decided to convict and fined the company £20.

COMMENT.

Section 28 (4) of the Act of 1937 provides that no . . . tank . . . which contains or has contained any explosive or inflammable substance shall be subjected to any welding . . . operation . . . which involves the application of heat until all practicable steps have been taken to remove the substance or any fumes arising therefrom, or to render them non-explosive or non-inflammable.

The subsection was amended by s. 11 of the Factories Act, 1948, but that part of the subsection which is specified above and upon which the charge was based, is not affected by the amendment.

Section 130 of the Act of 1937, provides that in the event of any contravention of the provisions of the Act, the occupier, or in certain cases the owner, of the factory shall be guilty of an offence and subs. 5 of the section enacts that, where it is proved that an offence under the act committed by a company has been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other officer of the company, he, as well as the company, shall be liable to be proceeded against.

Section 131 provides that offences under the Act for which no express penalty is provided shall be liable to a fine not exceeding £20 and it will thus be seen that, in the case reported above, the justices took a very grave view of the offence.

(The writer is indebted to Mr. H. A. Vowles, clerk to the Gloucester County Justices, for information in regard to this case.) R.L.H.

PENALTIES

Poole—August, 1950—causing a dog unnecessary suffering by killing it in an improper manner—fined £2. Banned from holding a licence or keeping a dog for three years. Defendant, a man of seventy-four with four previous convictions for cruelty to animals, became very angry when one of his dogs, an airedale, fought another of his dogs. He eventually separated the dogs and thrust the airedale into a coal shed; he then violently forced a considerable quantity of rat poison down the dog's throat and left it in agony without attention for more than thirty-six hours before it died. Defendant said he thought he had given the dog a condition powder.

Bow Street—August, 1950—failing to send to the Registrar of Companies annual returns of a limited company from 1943 to 1948 inclusive.—fined £18. To pay 20*s.* costs. Defendant, director of a limited company in Carmarthen.

Swansea—August, 1950—selling to the Milk Marketing Board eighteen gallons of milk containing ten *per cent.* added water—fined £10. To pay £5 5*s.*, costs.

Williton—August, 1950—careless driving—fined £5. To pay £16 8*s.*, costs. Defendant, a retired Naval commander, when driving on the wrong side of the white line hit an oncoming car.

Salisbury—August, 1950—stealing a suitcase and clothing value £25—four months' imprisonment. Defendant, a twenty-five year old hospital porter with three previous convictions for theft, said that he took the suitcase because there was a call-up coming over Korea and he did not want to be in it.

Ashford, Kent—August, 1950—dangerous driving—fined £10. To pay £5 5*s.*, costs. Defendant, a coach driver with eight previous convictions, five for speeding in coaches, was chased for over eight miles along the Ashford-Maidstone road by police who had to drive at seventy miles per hour to catch him.

Marlborough Street Magistrates' Court—August 1950—loitering with intent to steal from parked cars—two months' imprisonment. Defendant, a twenty-seven year old fruiterer with fourteen previous convictions, was found to have twenty-six ignition keys in his possession.

PERSONALIA

APPOINTMENTS

Mr. Justice Centlivres has been appointed Chief Justice of South Africa in succession to Mr. Justice E. F. Watermeyer who retires in October. Mr. Justice Centlivres was born in 1887. He went to Oxford and was called to the bar in Britain in 1910. In 1911 he was admitted a barrister in the Cape and he became a permanent Judge of the Cape Provincial Division of the Supreme Court in 1935. In 1939 he was appointed Judge of Appeal, and in May, 1950, he was sworn in as Acting Chief Justice of the Union.

Mr. David Scouller, LL.B., assistant solicitor to the city and county of Kingston-upon-Hull, has been appointed deputy town clerk of the county borough of Tynemouth. Mr. Scouller is twenty-eight years of age and served with H.M. Forces during the war, being released with the rank of captain.

Mr. L. D. Hall, probation officer for the city of Bristol, has been appointed a probation officer in the Lincolnshire combined probation area. During the war he served in the Royal Air Force and was awarded the D.F.C. Prior to this he was with the Metropolitan Police Force and was awarded the George Medal.

Mr. T. Earle Mallaban, formerly housemaster at Aycliffe Approved School, County Durham, has been appointed a probation officer in the Middlesex combined probation area.

OBITUARY

Sir Henry Dixon Kimber, Bart, died in London on September 4, at the age of eighty-eight. He was admitted a solicitor in 1887, and became senior partner in the firm of Kimber, Williams, Sweetland and Stinson. In 1919 he was elected chief commoner of the corporation of the City of London.

Lieut.-Col. Ardern Arthur Hulme Beaman, D.S.O., high sheriff of Gloucestershire in 1948, died on August 26 at the age of sixty-four.

Captain William Henry Charlton, T.D., high sheriff of Northumberland in 1932, died on September 6 at the age of seventy-four. He was appointed to the Commission of the Peace in Northumberland in 1919.

NEW COMMISSIONS

BRIDGWATER BOROUGH

Miss Clara Ada Bowen, 96, Wembdon Road, Bridgwater.
George Clifford Harris, 5, Park Avenue, Bridgwater.

CARDIFF CITY

Frederick Beard, 8, Wilson Place, Ely, Cardiff.
Herbert Cyril David, Triscombe, Llantrisant Road, Llandaff, Cardiff.
Johannes Bendix Drongeson, 43, Kimberley Road, Cardiff.
David Richard Edwards, 2, Heath Park Avenue, Cardiff.
Herbert Edward Edmonds, 6, Catherine Street, Cardiff.
Richard Trevor Evans, Sunningdale, Hollybush Road, Cyncoed, Cardiff.
Mrs. Theresa Doris Hallinan, Yscallog, Llandaff, Glam.
William John Hartland, 27, Princes Avenue, Cardiff.
Percival Hart James, Apremont, Llantrisant Road, Llandaff, Cardiff.
Emrys Glyn Jones, 10, Tyrwhitt Crescent, Roath Park, Cardiff.
David Gwilym Morgan, M.R.C.S., L.R.C.P., The Residence, Llandough Hospital, Penarth, Glam.
Edward Ewart Pearce, 79, Allensbank Road, Cardiff.
Howard Treseder Rees, Hill House, Llanishen, Cardiff.
Sidney George Rich, 11, St. Gildas Road, Heath, Cardiff.
John Benjamin Thomas, 2, Llandennis Avenue, Cyncoed, Cardiff.
Alfred Alexander Thorpe, 11, Raglan House, Castle Court, Cardiff.
Mrs. Alice Alexandra Constance Rees-Williams, 12, Cyncoed Road, Cardiff.
David Emrys Williams, 22, Bettws-y-coed Road, Cyncoed, Cardiff.
Mrs. Mabel Ellen Williams, 75, Eyre Street, Cardiff.
Sidney Williams, 133, Allensbank Road, Heath, Cardiff.

NOTICE

The next court of quarter sessions for the Isle of Ely has been brought forward to September 27, 1950, instead of October 4, 1950, as previously announced.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Appeals—*Agricultural Gangs Act*, 1867—*Refusal to grant gangmaster's licence—Appeal.*

Section 7, of the Act of 1867, provides that "any person aggrieved by the refusal of the justices to grant him a licence to act as gangmaster may appeal to the next practicable court of general or quarter sessions . . . ." Neither the Act of 1867, nor s. 27 (1) of the Local Government Act, 1894, which transfers the duties of justices in relation to the licensing of gangmasters to district councils, appears to contain any stipulation about the applicant's being informed of his right of appeal, similar to s. 300 (3) of the Public Health Act, 1936, which reads "the document notifying to the person concerned the decision of the council in the matter shall state the right of appeal." Your opinion is desired on whether there is any relevant provision requiring that the applicant shall be notified of his right of appeal. A.GANG.

Answer.

We agree that the council are not required by statute to inform applicants of the right of appeal: this obligation became comparatively recently common form in Acts of Parliament. But, as Mr. Neville Chamberlain said in another context when he was Minister of Health, common justice demands that the applicant shall be told of his right of appeal, when told that his application is rejected, and we should like to think that all local authorities did so.

2.—Contract—*Building work—Surety—Termination of contract.*

My council entered into a contract in 1947 with a limited company for the erection of a number of council houses within the borough, and a bond was secured from an insurance company for the due performance of the contract. The bond was of the usual type, and provided that it should be voided in the event of the company well and truly performing their obligations under the contract, and it was further agreed that the surety should not be released from the obligation by any arrangement made either with or without the assent, or notwithstanding the dissent of the surety, either for alteration of time or mode of payment, or for variation of the works to be executed, or by any dealing or transaction which may take place between the contractor or the council in relation to the contract. The contract provided that the houses should be erected by March, 1948, but this time was extended by agreement for a further six weeks. The conditions of contract were the usual R.I.B.A. conditions, and one clause stipulated that liquidated damages would be claimable in respect of the period subsequent to March, 1948, during which the houses remained uncompleted. The conditions of contract also gave the right to my council to terminate the contract if the works did not proceed with due diligence, or in the event of the works being wholly suspended after fourteen days from the service of a notice requiring the company to perform in accordance with the contract. Before March, 1948, the company got into financial difficulties, and throughout the whole of the period between the commencement of the contract and March, 1948, work did not proceed with due diligence. In August, 1948, a receiver was appointed on behalf of a debenture holder, and he appointed a manager, whose duty it was to carry on the contract with my council. From the date of the appointment of the receiver and the manager and for the next twelve months the standard of work was greatly improved, and proceeded with due diligence. In May, 1949, the manager applied to the corporation for a waiver of the liquidated damages clause, but was informed the same month that the council could not agree to his request, and a minute exists to the effect that the request be not granted. At the time of this request the manager stated that the works would be finally completed by December, 1949, but in fact, this did not occur. In January, 1950, the manager was interviewed by my council (work having fallen off during the previous months), and he stated that completion would be effected in May, 1950, but in April the receiver abandoned the contract, the receiver and the manager retired, and the corporation terminated the contract on the grounds that the work had been wholly suspended. My council have never expressly agreed to any extension of time other than for the six weeks' extension above mentioned, and once the receiver had been appointed the work proceeded satisfactorily enough to prevent the contract being terminated by my Council. The manager for the receiver was fully aware that my council would not waive the liquidated damages clause.

Your opinion is therefore sought as to—

(1) Whether the surety for the original contract remains liable for the due completion of the works by the proposed new contractor, or whether a further bond should be obtained in respect of the proposed new contractor:

(2) Whether it can be alleged that the corporation have acquiesced in the delay, or by laches have lost their right to apply the liquidated damages clause and to claim such damages. AUB.

Answer.

(1) On the facts before us, no. The surety bound himself on behalf of the original contractor, but if the contract be terminated, and a new contract entered into, the surety cannot be regarded as responsible for performance by a different person, who may be unknown to him and will not be a successor in title to the person for whom he stood. A new bond should be entered into.

(2) In our opinion, no.

3.—Estate Duty—*Valuation of real property—Deduction of expenses of sale.*

Your opinion is requested as to valuation of real property in connexion with the chargeability of estate duty. In one case, the deceased agreed to sell the property at a certain figure before his death, though he died before the contract was formally signed. In the other case the executor sold the property after death. In your opinion, is estate duty chargeable on the full price realized or is the executor entitled to deduct estate agent's commission and legal fees? ALEJ.

Answer.

The value is by s. 7 (5) of the Finance Act, 1894, the price which the property "would fetch if sold in the open market." This could be more than the price agreed, or obtained, in your two cases. And whether the Revenue accepts these prices, or claims that the market price would have been higher, the price which a property fetches in the open market is, in our opinion, the gross price. This accords both with the common use of words and with the reason of the thing: in ordinary market transactions the vendor fixes his reserve at a figure which will have made it worth his while to sell after he has paid the expenses of selling.

4.—Highway—*Dedication—Forecourt—Rights of Way Act*, 1932.

A is owner of a forecourt which abuts on the public highway. Before January 1, 1934, he roped off the forecourt on one day in every year. On January 8, 1935, he exhibited a notice in accordance with s. 1 (3) of the Rights of Way Act, 1932. This was torn down, and A gave notice to the county council in accordance with the same section. Since 1935, the forecourt has not periodically been roped off and A inquires if his position is being prejudiced by his failure to do so. ABC.

Answer.

The notice under the subsection does not of itself disprove dedication, but if dedication notwithstanding the notice is sought to be established the intention must be proved. Dedication is, here as elsewhere, a matter of fact: *A. G.* v. *Esher Linoleum Co.* (1901) 66 J.P. 71 (and many other cases). But seeing that up to 1934 the owner offered physical evidence that he had not dedicated, and thenceforward had offered the statutory evidence, we regard his position as reasonably secure.

5.—Local Government Act, 1933—*Accounts—Inspection by councillor—Vouchers, etc.*

A question has arisen as to the right of a member of the council under s. 283 (3) of the Local Government Act, 1933, to inspect vouchers. It is submitted that under this section a member can only inspect accounts, *i.e.*, entries in books of prime entry or in the ledger, as distinct from vouchers or documents from which these entries are compiled. Support is given to this interpretation by s. 224 (1) of the Local Government Act, 1933, which specifically mentions vouchers. The council have not adopted model standing order 29, "Inspection of Documents." ANP.

Answer.

Section 283 is a penal enactment: *see* subs. (7). We think for this reason, and because of the graduated rights given to different persons, in the section and in s. 224, that subs. (3) does not extend to supporting documents. If the member, on inspecting the accounts, wishes to follow up some particular matter, his proper course is to move the council to direct the officials to let him see the documents.

6.—Magistrates—*Practice and procedure—Time limit for proceedings—Information laid within, but summons issued after, prescribed period.*

Proceedings are taken under the Feeding Stuffs (Rationing) Order, 1943 (S.R. & O., 1943 No. 1498), in respect of an alleged offence

under this order. A charge is preferred under art. 2 (i) of the Feeding Stuffs (Rationing) Order, 1943 (S.R. & O., 1943 No. 1498), the proceedings of which are governed by s. 2 of reg. 93 of the Defence (General) Regulations, 1939, which provides that any proceedings may be commenced at any time not later than twelve months from the date of the commission of the offence. A summons charging an alleged offence on March 10, 1949, is dated March 28, 1950, and recites that " information has been exhibited this day, etc. . . ." On submission that the summons is bad, the prosecution alleges that an information had in fact been sworn on March 9, 1950, which led to the summons of March 28, 1950.

It was submitted that proceedings were not effective until the justice had considered the information under s. 9 of the Indictable Offences Act, 1848, and that until the justice exercised the discretion vested in him by that section to issue such a summons the proceedings were not effective or complete as contemplated by the Summary Jurisdiction Acts (which limits the period to six months), or by reg. 93 of the Defence Regulations, 1939, which extends the period to twelve months (*see* notes in *Stone* on s. 9 Indictable Offences Act, 1848).

It is submitted that the summons, to have been good, should have been dated on a date within twelve months of the alleged commission of the offence and as the result of an information dated on the same day (*see* schedule to the Summary Jurisdiction Act, 1848), which contemplates the information being adjudicated upon or decided upon and the summons issued " this day." It is further submitted that if in fact, which is in no way admitted in the particular case, the information had been actually sworn on March 9, the summons should have been dated on that day, to be valid for a charge alleging an offence on the preceding March 10 (*see* 14 *Halsbury*, notes on s. 11 of the Summary Jurisdiction Act, 1848), which states that time must be calculated from the day of the offence alleged to the day numerically corresponding to that day less one in the sixth month next following.

Your opinion is required on this point, as it is contended that, if the commencement of the proceedings is the information, it is possible to swear an information within the twelve months but hold over the issue of a summons thereon indefinitely, if needs be, which was the very thing both the Summary Jurisdiction Acts and the Defence Regulations aimed at preventing. The object of the Act and the Regulations was that the defendant should be proceeded against within the period stipulated and certainly such proceedings should be dated within the statutory twelve months. It is however difficult, in cases of this kind, where the printed forms of summons follow the form laid down in the Summary Jurisdiction Act, 1848, to see how the defendant is to have the benefit of knowing whether the proceedings are brought against him within the twelve months, if the information is not exhibited on the summons and if it has, in fact, been exhibited on a day other than the summons date and which would deprive him, if he were unable to see the information, of the statutory defences properly available in any particular case. STUM.

Answer.

Our learned correspondent is evidently concerned with summary proceedings, so we do not understand his references to the Indictable Offences Act, there being no general time limit for the institution of proceedings under that Act.

The summons dated March 28, 1950, in respect of an offence alleged to have been committed on March 10, 1949, stating that the information was laid " this day " is clearly bad on the face of it, by reason of s. 11 of the Summary Jurisdiction Act, 1848, or in this case the regulation. If in fact information was laid on March 9, 1950, that fact should have been stated in the summons. The present forms in summary proceedings are those prescribed by the Summary Jurisdiction Rules, 1915, and it is true that the words " information has been laid this day " are included, but it is by no means uncommon for the words " this day " to be altered if in fact the summons is signed and issued on a day subsequent to that on which information was laid. Section 11 imposes a time limit for laying information, but does not expressly do so in respect of the issue of a summons. As to the issue of a summons, s. 1 is in point, and though it does not say that the justice should issue process forthwith, it certainly seems intended that once the informant has laid his information before the justice and satisfied him that process ought to be issued, such process should be signed and issued as soon as practicable. The summons should certainly contain a statement of the day on which the information was laid before the justice who signed it, and as the date of the alleged offence will also be stated, the defendant can tell if the proceedings are out of time. The date of the information must, of course, be stated, and " this day " must not be left in if it is not correct.

We entirely agree that any practice of laying an information within time and then asking the justice not to issue his summons until some much later time is to be deprecated. There may be instances, however, in which it is impossible to get the summons signed at once, and we think it lawful in such cases for the summons to be issued after the expiration of the six months, provided it is correctly dated and recites the fact that the information was laid on an earlier day within the six months. We cannot go so far as to say, in the absence of authority, that a summons is bad and the proceeding out of time because of delay in issuing the summons, if the information was properly laid before a justice within six months and that justice subsequently signs the summons. It seems to us that the practice, if indeed such a practice should exist, would be a matter for strong comment, but not fatal to the validity of the proceedings. We suggest it is for a justice before whom information is laid to see that, in the absence of unusual circumstances, any process he grants is issued promptly.

7.—Public Health Act, 1936—*Movable dwellings—Licence for site—Time limit—Type of dwelling.*

A summons has been issued against a local authority appealing against the imposition of certain conditions namely that the licence has only been granted for a term of three years, and the appellant contends that there should be no period of time fixed. The licence also states that only trailer caravans shall be allowed on the camp. In your opinion do you think that the local authority is in order in making these two conditions, and would the magistrates be justified in allowing the appeal. AIRE.

Answer.

As indicated in our articles at 113 J.P.N. 7, 223, it is doubtful whether a local authority can impose a time limit under s. 269 (1) (i), in view of the absence from s. 269 (1) *(a)* of any express power such as occurs in s. 269 (1) (*b*). The negative view receives support from *Pilling* v. *Abergele U.D.C.* [1950] 1 All E.R. 76 : the local authority may be able to say that this use of land will involve risks to health in 1950, but how can they say in 1950 that it will begin to do so in 1954 ? As regards the other condition we have more doubt ; presumably the idea is that the trailer caravan will involve less sanitary difficulties than a tent, shed, or similar structure. But there are motor caravans which are not trailers, *i.e.*, the engine and the dwelling are built as a unit. Why should these be less sanitary than trailers ? Such matters are for the magistrates to consider. The answer to the query therefore is that the magistrates are justified in allowing the appeal if they think the second condition unreasonable, and also if they think the first condition either unreasonable or of dubious validity.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

COUNTY BOROUGH OF WOLVERHAMPTON

Appointment of Law Clerk

APPLICATIONS are invited for the appointment of Law Clerk in my department. Salary Grade A.P.T. IV (£480—£525 p.a.). The appointment will be subject to the Conditions of Service of the National Joint Council for Local Authorities Administrative, etc., Services, to the provisions of the Local Government Superannuation Act, 1937, and to passing a medical examination, and will be determinable by one month's notice on either side.

The person appointed will be engaged mainly on conveyancing and drafting of agreements. Experience of the operation of the Small Dwellings Acquisition Acts would be an advantage.

Applications, together with the names of two referees, should reach me not later than Saturday, September 30, 1950.

Canvassing, directly or indirectly, will be a disqualification.

J. BROCK ALLON,
Town Clerk.

Town Hall,
Wolverhampton.

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